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more frequently in the courts, and it is believed that the desire of everybody will be that the law may carry forward the tendency of the decision in *Schuyler* v. *Curtis* rather than adopt the suggestion in *Corliss* v. *Walker* that the distinction between public and private character is unimportant.

The attention of those who are interested in the matter is directed to the able article by Messrs. Warren and Brandeis, entitled, "The Right to Privacy," in 4 HARVARD LAW REVIEW, p. 193. It is, so far as is known, the only scientific discussion of the subject, and it contains an interesting plea for the protection of "the right to be let alone," as Judge Cooley calls privacy, and also a collection of the few authorities that throw any light upon the subject.

CHARLES INGALLS GIDDINGS, a former editor of this REVIEW, was drowned in Lake Winnipiseogee, N. H., Aug. 17, 1893. He had taken several poor boys from Boston to New Hampshire for a vacation, and lost his life in an heroic effort to save one of the lads who had fallen overboard from a steamer. Mr. Giddings received the Harvard A. B. degree in 1887, and graduated at the Law School *cum laude* in 1890. In addition to the editorial work done during his course, he contributed to the REVIEW for January, 1892, an article on "Restrictions upon the use of Land" (5 H. L. R. 274). Mr. Giddings is understood to have made an excellent beginning in legal practice. Some idea of his professional standing may be gathered from the fact that he was selected to furnish for the American and English Encyclopædia of Law an article on the important and difficult topic, *Ultra Vires*. Of his character we need only say that those who knew him well, regard his death as a fitting climax to a pure and unselfish life.

RECENT CASES.

AGENCY — BROKERS — RELATIONS OF THEIR CUSTOMERS TO THEM. — A customer and a broker buying and selling stocks upon margins stand in the relation of pledgor and pledgee, and the fact that the broker has an implied right of repledging stocks does not change the relation. *Skipp et. al* v. *Stoddard*, 26 Atl. Rep. 874 (Conn.).

This case shows the common doctrine. See *Markham* v. *Jaudon*, 41 N. Y. 235, which is perhaps the leading case on the subject; and also Jones on Pledges, § 495. The case of *Covell* v. *Loud*, 135 Mass. 41, is *contra*, the court treating the dealing between the parties as an executory agreement, with power in broker to sell without notice on default by customer.

CONSTITUTIONAL LAW — GEARY ACT — CHINESE EXCLUSION. — An Act of Congress, after continuing the laws then in force for the exclusion of Chinese from the United States, provides for the removal of Chinese not lawfully within this country, requiring that all Chinese laborers entitled to remain in the United States shall obtain certificates of residence from persons authorized by the act to give them, under penalty of removal on failure to do so within one year. On an appeal from the Circuit Court which raised the question of the constitutionality of the Act, the court *held*, that the Act was constitutional. That inasmuch as Chinese laborers cannot under the naturalization laws become citizens, they remain subject to the power of Congress to order their expulsion. That the order of deportation is not a punishment, "but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation has determined that his continuing to reside here shall depend," consequently that part of the Constitution securing the right of trial by jury and prohibiting unreasonable searches and punishments has no application. *Fong Yue Ting* v. *United States*, 13 Sup Ct Rep. 1016. Fuller, C. J., and Field and Brewer, JJ., *dissenting*.

CONTRACTS — ASSIGNMENT OF CHOSE IN ACTION. — A, a creditor of B, assigned his claim for valuable consideration to C. D, another creditor of B, garnisheed the claim, and served notice on B, before C had given notice of the assignment. A statute provided that an attaching creditor should have all the rights of a *bona fide* purchaser. *Held*, that notwithstanding D was the first to notify the debtor, C would prevail, since his assignment was prior in time. *Meier* v. *Hess*, 32 Pac. Rep. 755 (Ore.).

The court adopts the prevailing American view that where there are successive assignments of a *chose in action*, the prior assignment will prevail, independently of notice to the debtor. This doctrine is laid down in the following cases: *Thayer* v. *Daniels*, 113 Mass. 129; *Kennedy* v. *Parke*, 17 N. J. Eq. 415; *Fairbanks* v. *Sargent*, 104 N. Y. 108. The English view, that the assignee who first gives notice to the debtor will be protected, originated in *Dearle* v. *Hall*, 3 Russ. 48, and has been followed in some jurisdictions in this country. See *Campbell* v. *Day*, 16 Vt. 558; *Vanbuskirk* v. *Insurance Co.*, 14 Conn. 141; *Murdock* v. *Finney*, 21 Mo. 139.

CONTRACT — BREACH — MEASURE OF DAMAGES. — A contracted to do certain work for B, who broke the contract after part performance by A. In this action by A's assignee, the declaration contained a count for breach of contract, and also counts "for labor expended and expenses incurred in and about the prosecution of the work." Plaintiff elected to sue on the *quantum meruit*. *Held*, "the general rule is well settled that a party to a contract where labor is to be performed, upon a breach of that contract by the other party, has two remedies open to him. He may sue upon the contract and recover damages for its breach; or he may ignore the contract, and sue for services and labor expended, and expenses incurred from which he has derived no benefit. In case he pursues the latter remedy, the measure of damages as to services is not necessarily the contract price, . . . but he may recover what the services are reasonably worth, although in excess of the rate fixed by the contract." *Hemminger* v. *Western Assurance Co.*, 54 N. W. Rep. 949 (Mich.).

The plaintiff in this case has an adequate remedy in an action on the contract, and there is no reason why he should be allowed to sue in quasi-contract. That he has the option, however, must be admitted as settled law; and as to allow a quasi-contract where there is no necessity for it is inconsistent with the nature of that action, this rule must be regarded as an anomaly. In regard to the measure of damages where plaintiff elects to sue in quasi-contract, the statement by the court is certainly wrong on principle, and seems to be supported by no authority outside of Michigan. The action is founded solely on principles of natural justice, and there can surely be no justice in allowing the plaintiff to recover more than the valuation he had himself placed on his work.

CONTRACTS — MALICIOUS INTERFERENCE WITH RIGHTS UNDER ORGANIZED LABOR. — Defendants, who were members of a committee of trade unions, induced persons who had entered into contracts with plaintiff to break their contracts and not to make further ones with plaintiff, by threatening that workmen would be withdrawn from their employ. *Held*, that an action lay for maliciously procuring the breach of contract, and also for maliciously conspiring to injure plaintiff by preventing persons from entering into contracts with him. *Temperton* v. *Russell* (1893), 1 Q. B. 715 (Eng.). For a discussion of this case, see the Notes.

CONTRACTS — MALICIOUS INTERFERENCE WITH RIGHTS UNDER ORGANIZED LABOR. — Plaintiff was a non-union man working for a clothing house under a contract by which he could be discharged at the end of any week, but he was told that he would be permanently employed. The local union labor organization informed his employers that unless plaintiff were discharged they would have to inform all labor organizations of the city that the house was a non-union one. In consequence of this threat, and for no other reason, plaintiff was discharged. *Held*, that plaintiff had good cause for action against the labor unions for maliciously interfering with his rights. *Lucke* v. *Clothing Cutters' and T. Assembly, No.* 7507, *K. of L.*, 26 Atl. 505 (Md.). See note on *Temperton* v. *Russell*.

CONTRACTS — MISSING-WORD COMPETITIONS. — The successful competitors in a missing-word competition brought this action, seeking administration of the trusts of the money in the defendant's hands for distribution among the winners. *Held*, that missing-word competitions are decided by chance, and are therefore covered by the Acts against lotteries; and since the trusts arise out of an illegal transaction, the court will not assist in the administration of them. *Barclay* v. *Pearson* (1893), 2 Ch. 154.

CONTRACTS — VESTED RIGHTS — ELECTRIC LIGHT COMPANIES. — The orator had entered into a contract with a village to supply it with lights, and established a plant in accordance with the terms of that contract, using a low voltage system. Defendant

later erected poles and strung wires with the consent of the trustees of the village, sending through their wires a current of high voltage. The wires of defendant were placed so near those of the orator that there was danger of induction, the result of which would be the destruction of the buildings which the orator lighted; and for this they would be responsible in damages. *Held*, an injunction will be granted to restrain the defendants from such interference. *Rutland Electric Light Co.* v. *Marble City Electric Light Co.*, 26 Atl. Rep. 635 (Vt.).

This question does not seem to have arisen in Vermont. The case of *Hudson Telephone Co.* v. *Jersey City*, 49 N. J. L. 624, and other similar cases rendered this decision necessary, however. These cases decided that after a franchise to erect poles and wires had been granted, and money expended on the faith of it, it could not be revoked. Although no attempt at a real revocation was made here, what was done amounted to the same thing; for if the defendants were allowed to operate their plant in the manner stated, the plaintiff's contract with the city was practically of no benefit to them. For a discussion of this subject, see Keasbey on Electric Wires, pp. 35 and 36.

CONTRACTS VOID AS AGAINST PUBLIC POLICY. — By a Statute P. L. 1889, p. 462, certain provisions were made for the selection of papers to publish the laws, one of which was that the paper having the largest circulation was to be chosen. Plaintiff and defendant agreed that, in order to allay and stop the rivalry existing between them, in their efforts to obtain the selection and business of publishing the laws of the State, for their respective newspapers, for a term of two years, in case of the designation of either paper to publish the laws, the net amount received for this service should be equally divided between the two papers, and that their newspapers should be alternately selected. *Held*, this contract was void, as against public policy, being in contravention of the statute, which was intended to secure the publication of the laws through that organ which would bring them before the eyes of most men. *Brooks et al.* v. *Cooper*, 26 Atl. Rep. 978 (N. J. L.).

This very able opinion contains a thorough *résumé* of all the cases bearing on the subject. The soundness of the decision is apparent.

CRIMINAL LAW — INTERSTATE RENDITION — POWER TO TRY FOR DIFFERENT CRIME. — Persons brought into one State from another by extradition proceedings to answer a charge of crime may be tried on an indictment for a different crime. *Lascelles* v. *State*, 13 Sup. Ct. Rep. 687, affirming the decision of the Georgia court in the same case, 16 S. E. Rep. 945; 7 Harv. Law Rev. 52.

Authorities on this point are somewhat divided, but the trend of recent decisions has been towards the result reached in this case. See 6 Harv. Law Rev. 158, and Id. 320.

EQUITY — INJUNCTION RESTRAINING BREACH OF RIGHT TO PRIVACY. — *Held*, that a court of equity, at the instance of one of the relatives of a deceased person, will enjoin the making and placing on public exhibition of a statue of the decedent by unauthorized persons. *Schuyler* v. *Curtis*, N. Y. 24 Supp. 509.

See an article on the "Right to Privacy," by Messrs. Warren and Brandeis, in 4 Harv. Law Rev., p. 193.

EVIDENCE — DYING DECLARATIONS. — Deceased said, "He was hurt bad; he was beat to death," and then stated the circumstances of the quarrel. He died in a few hours. *Held*, that the statement was not admissible as a dying declaration, because it was not certain that deceased thought he was going to die. *Justice* v. *State*, 13 So. Rep. 658 (Ala.).

This decision shows how rigorously an exception to the rule against hearsay evidence is treated by courts nowadays. Formerly, dying declarations were received in civil as well as criminal cases (*Wright* v. *Littler*, 3 Burr. 1244); but now they are admissible only in cases of homicide where the death of the declarant is under investigation.

EVIDENCE — STATEMENTS OF AN ATTORNEY. — Action to recover damages for accident caused by defendant's alleged negligence. Defendant's counsel offered as evidence a letter stating what purported to be the facts of the case, written in reply to an inquiry of the defendant's by a clerk of the attorney whom the plaintiff had requested to present the claim. *Held*, the letter was admissible. Field, C. J., and Lathrop, J., *dissented*, on the ground that the communication was a confidential one, which the attorney had no business to disclose. *Loomis* v. *N. Y., N. H., & H. R. Co.*, 34 N. E. Rep. 82 (Mass.).

The majority view seems the better one. The plaintiff gave the attorney power to arrange a settlement. To do this he would have to state the facts on which the demand was founded. The letter written by the attorney's clerk under the former's direction purported to state them. Looking at it in this way, it is hard to see why the communication was a breach of confidence. Cf. 1 Greenleaf Ev. § 186, and cases cited.

PUBLIC OFFICE — MANDAMUS. — Respondent was duly appointed town clerk, but refused to serve. *Held*, that mandamus will lie to compel acceptance of the office. *People ex rel. German Ins. Co.* v. *Williams*, 33 N. E. 849 (Ill.).

The point is a novel one in this country. The careful examination of authorities by Shope, J., shows that there is a common law duty upon all citizens to hold office if duly elected or appointed thereto, in direct contradiction of the popular idea that a man can decline office or resign therefrom at his pleasure.

QUASI-CONTRACTS — TAXATION — VOLUNTARY PAYMENTS UNDER MISTAKE OF LAW. — The relator was a corporation exempt by statute from taxation. It voluntarily made a report to the comptroller, and without objection paid taxes on the basis of that report. By a statute the comptroller is empowered to readjust taxes illegally paid by a corporation. *Held*, notwithstanding the statute, the relator cannot recover taxes voluntarily paid under a mistake of law. *People* v. *Wemple*, 23 N. Y. Supp. 661.

The decision is interesting, as showing a very strict construction of an important statute in accordance with the common law rule against recovery of money paid under mistake of law.

REAL PROPERTY — EQUITABLE MORTGAGE. — Holder of an unrecorded equitable mortgage has a claim against the mortgagor's assignee for benefit of creditors which takes priority over the rights of such creditors. *Martin* v. *Brown et al.*, 26 Atl. Rep. 823 (N. J.).

Case is interesting, owing to the valuable discussion by Pitney, V. C., as to who are entitled to the rights of *bona fide* purchasers. He seems to consider the law as settled in New Jersey, *contra* to Massachusetts decisions, that a legal mortgagee of land, taking it as security for a past debt, is postponed to a prior equitable mortgagee who gives value at the time.

REAL PROPERTY — ESTATE OF LESSEE OF STALL IN A MARKET. — *Held*, that the lessee of a stall in a market has no such estate as will enable him to maintain trespass against a railroad company which, by eminent domain, has taken possession of the market building by virtue of a bond delivered to the market company. *Strickland* v. *Pennsylvania R. Co.*, 26 Atl. Rep. 431 (Pa.).

This decision is correct. It rests upon the peculiar position of the holder of a stall in a market, who resembles the lessee of a store much less closely than the holder of a pew in a church. He is merely holder, by virtue of his lease, of a license to sell at the particular stall assigned to him such articles at such times as the municipality may direct. He has no right in the ground covered by his stall.

REAL PROPERTY — RIGHTS OF PEW-HOLDERS. — The plaintiff owned a pew in a church. The trustees sold the building, and with the moneys erected another similar to the first in the arrangement of its pews. To get the congregation to assent to the sale, the trustees had represented that each pew-holder should have a seat in the new church corresponding in location to his seat in the old. *Held*, it was the duty of the trustees to tender such a pew upon the payment of such sum as in equity the plaintiff ought to pay, if the cost of the new structure exceeded the proceeds of the old one and the sums in the treasury of the society. If they failed to allot such a pew, he should be indemnified for his loss. *Mayer* v. *Temple Beth El.*, 23 N. Y. Supp. 1013 (Com. Pl.).

This case seems in accord with what little authority there is upon the point involved. The same result is reached in the case of St. George's Church, reported in Hoffman, Ecc. Law, 250.

REAL PROPERTY — WATERCOURSES — PRIOR OCCUPANCY. — *Held*, where the owner of a dam across a stream does not set back the water to a greater extent than is necessary for the operations of his mill, nor pollute or divert the water, it is error, in an action against him by a junior proprietor of the dam below his, to perpetually enjoin him from entirely cutting off or diminishing the natural flow of the stream so that plaintiff shall not, at all times, have a reasonable supply of water therefrom. *Mumpower* v. *City of Bristol*, 17 S. E. Rep. 853 (Va.).

The court base their decision wholly on the ground of prior occupancy, and follow the decisions of Massachusetts (16 Gray, 43), Maine (56 Me. 197), and Kentucky (78 Ky. 463). The great weight of authority, however, is strongly against the proposition, that prior occupancy gives any such rights as are here claimed. See Gould on Waters, §§ 226, 227.

STATUTES — IMPEACHMENT OF. — *Held*, the fact that a bill has been signed by the presiding officers of the general assembly, approved by the governor, and duly deposited in the office of the secretary of state, shows, in the absence of anything on its face to the contrary, that it has become a law, and it is not competent to impeach the same by the journals of the two Houses or other evidence. *State* v. *Platt*, 2 S. C. 150, and *State*

v. *Hagood*, 13 S. C. 46, overruled. *State ex rel. Hoover* v. *Town Council of Chester*, 17 S. E. Rep. 752 (S. C.).

It was here claimed that the speaker of the House of Representatives had altered the bill in question, after its passage, to suit himself, and that it would so appear if the journals should be examined. The ruling of the court was in accordance with a late ruling of the United States Supreme Court, in *Field* v. *Clark*, 143 U. S. 649. The point is a hotly contested one. Connecticut, Indiana, Iowa, Louisiana, Maine, Mississippi, Nevada, New Jersey, New York, North Carolina, and Texas hold that the enrolled Act is conclusive; while Alabama, Arkansas, Colorado, Florida, Illinois, Kansas, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, Ohio, Oregon, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and Wyoming hold that the journals control the enrolled Act. The authorities are well collected in 143 U. S. p. 661, note.

TORT — CONTRACT — CONCURRENT REMEDIES. — The defendant, a commissioner of highways, agreed with the plaintiff to extend a ditch into the highway so as to carry off surface water which collected on the plaintiff's land. Defendant dug the ditch so carelessly that it gathered instead of draining off the water. In an action of tort which the plaintiff brought to recover for the damage caused by the water, it was objected that plaintiff's remedy was contract. The court, however, allowed the action, giving damages only for injury caused by water brought on to the land by the ditch. *Fromm* v. *Ide*, 23 N. Y. Supp. 56.

The common instance where an action of tort is allowed for damages resulting from breach of contract is that of a common carrier or innkeeper who loses goods left in his charge. Judge Cooley (Cooley on Torts, p. *91) says, "These are exceptional cases." The reasoning of the court in the present case seems satisfactory, however, namely, that the defendant has committed a breach of the duty he owed the plaintiff not to injure his property while performing the contract. On this point see Cooley on Torts, § 91; Clerk & Linsdell on Torts, 2; Pollock on Torts, 463 and 466.

TORTS — LIBEL — MISTAKE IN NAME. — In an action against a newspaper for libel, it appeared that plaintiff was a real estate and insurance broker of South Boston, and that, in an article giving an account of a person who was fined in a police court, the paper described the prisoner as "H. P. Hanson, a real estate and insurance broker of South Boston," while the name of the prisoner was A. P. Hanson, also a real estate and insurance broker of South Boston, and that the intention was to describe the proper person, and that plaintiff's name was used by mistake. *Held* (Holmes, Morton, and Barker, JJ., *dissenting*), that plaintiff could not recover; that it was not sufficient to show that plaintiff's name was used in the article, but it must be further shown that he was the person whom the article was intended to describe. *Hanson* v. *Globe Newspaper Co.*, 34 N. E. Rep. 462 (Mass.).

The court seem to have taken the ground that defendants are not liable, because they did not intend to refer to the plaintiff. It is submitted that this ground cannot be supported. The liability of defendants is to be measured by the natural effect of their acts, and not by their intention. The publication of such an article must certainly have been understood by the public as referring to the plaintiff, and his character must have been correspondingly damaged. The fact that defendants did not mean to refer to plaintiff is no excuse. The effect, not the intention, is material. Odgers on Libel and Slander, pp. 93, 264. There being no question of privilege raised here, "malice in fact need not be proved; the words are actionable if false and defamatory, although spoken or published accidentally or inadvertently." Odgers on Libel and Slander, pp. 5, 266.

TRUSTS — STATUTE OF FRAUDS. — A conveyed certain land to B by a deed absolute in form, but it was orally agreed that B should hold the land in trust for A; there was no consideration for the conveyance. A entered into possession, and expended considerable money on the faith of this agreement. This was an action by C, to whom A was indebted, to have B declared trustee of the land for A. *Held*, that the express trust, being oral, was void, under the Statute of Frauds, and could not be enforced. *Flour Mill Co.* v. *Kistler*, 54 N. W. Rep. 1063 (Minn.).

This is in accordance with the weight of authority in this country, but in England the opposite result would be reached. The express trust cannot be enforced, on account of the statute; but as the grantee has given nothing for his title, it is unfair that he should keep the beneficial interest for himself. In England, on principles of natural justice, equity would raise a constructive trust for the benefit of the grantor. It would seem that this rule is the sounder one, as by it the just result is obtained, with no violation of the statute.

WILLS — CONSTRUCTION — EXTRINSIC EVIDENCE. — The testator bequeathed property to A, B, C. Hearing of their death, he inserted "or to their heirs" in the will, added "deceased" after the name of each legatee, and then republished the will. *Held*, the legacies will not lapse, since the additions indicate words of substitution. The court is entitled to put itself in the position of the testator, and to do this may resort to extrinsic evidence of the circumstances under which the additions were made. *In re Gilmor's Estate*, 26 Atl. Rep. 614 (Pa.).

In *Barnett's Appeal*, 2 Rawle, 28, "or his heirs" was held to amount to "and his heirs," on the ground that "the inference to be drawn from the use of a copulative instead of a disjunctive is too feeble." The principal case would, doubtless, have been similarly decided, had not the court availed itself of the extrinsic evidence, which clearly showed the legacies were never meant to lapse. The treatment of the case is clear and scientific. There is no confusing talk about "latent ambiguities," but the view is adopted which is gaining ground, that a written instrument may be construed in the light of all the extrinsic facts.

REVIEWS.

THE LAWS OF WILLS. By J. B. Cassoday, LL. D. West Publishing Co., St. Paul, 1893, 8vo. pp. 310.

Cassoday on Wills will prove valuable in making a comprehensive review of the subject at short notice. The practising lawyer will find it elementary and didactic rather than argumentative.

To the scholar it will prove unsatisfactory from its lack of logical division and scientific thoroughness, such a topic as the admission of extrinsic evidence in aid of the interpretation of a will being dismissed with the quotation of a single paragraph from Wigram.

As a statement of existing Wisconsin law, the book will be valuable in many instances to the students in Judge Cassoday's courses.

C. P. H.

LAW OF FOREIGN CORPORATIONS. A Discussion of the Principles of Private International Law and of Local Statutory Regulations applicable to Transactions of Foreign Companies. By William L. Murfree, Jr. pp. xlv, 376. St. Louis: Central Law Journal Co., 1893.

This is the first distinct treatise on a growing branch of the law, and one extremely important under our Federal system. The most interesting chapters are those relating to the right of a State to control within its borders a corporation chartered by another State as affected by the Constitution of the United States. A more thorough examination of the constitutional principles involved would have been valuable. However, the author does state with great force his objections to the present doctrine of the Supreme Court that a corporation is a citizen of the State creating it, so as to give jurisdiction to the Federal courts, although not a citizen within the privileges and immunity clause. This doctrine of the courts was by implication adopted by Congress in the Judiciary Act of 1887, where for the first time is found the term "corporation" in a statute giving jurisdiction, — a fact not mentioned by Mr. Murfree. But for the most part little more has been attempted in the book than a statement of the decisions. It must be said, however, that this has been well done. The arrangement is very good.

E B. B.